IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 418 of 2002
WITH
CIVIL APPLICATION NO.7230 OF 2002

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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BHANGABHAI HIRABHAI VASAVA

Versus

RAMCHANDRA ANANRAO

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Appearance:

1. Appeal from Order No. 418 of 2002 with CA no.7230/02

MR HARSHAD J SHAH for Petitioner No. 1

MR HARIN P RAVAL for Respondent No. 1-2

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CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 26/08/2003

ORAL JUDGEMENT

1. By consent of learned Advocates for the parties, the Appeal as well the Civil Application are taken up for hearing today.

2. Both the counsel have taken me through the pleadings and the documents referred to by the learned Lower Court while dealing with the application preferred by the plaintiff under Order 39, Rule 2 of the Civil Procedure Code. Indisputably, the learned Lower Court while dealing with application Exh.5 had ordered for appointment of Commissioner for drawing Panchnama as to the possession of the land in dispute referred to in the plaint. Mr. Raval has shown the copy of the document executed in 1963 by the father of the present plaintiff and it is submitted that the defendant was put into possession of the property by the father of the plaintiff on consideration, and after losing the battle in the Revenue Court, the present suit has been filed as an after thought. It is not in dispute that the document executed in 1963 is not a registered sale deed. The description of the property shown in the document also indicates that some part of the Wada land must have been sold by the father of the plaintiff to one Narayanbhai as the name of Narayanbhai is referred to while describing the land sold to the defendant. The document also reveals that prior to the document, the defendant was put into possession and he was managing the property and enjoying the property. The tenor of the covenant indicates that (1) Since some years prior to the execution of the deed in the year 1963, the defendant was enjoying some part of the property and (2) The father of the deceased had agreed to sell some property to defendant. On appreciation of the document executed in the year 1963, it is not clear whether the entire piece of land owned by the father of the plaintiff was sold to the defendant. So, it would be appropriate to direct the parties to maintain status quo as to their respective possession of the land reflected in the Panchnama drawn by the Commissioner till the hearing and disposal of the suit, otherwise, the balance of convenience may get disturbed and either party may be prejudiced. However, both the parties are directed not to alienate the property in their respective possession to any third party till the disposal of the suit. The interim relief granted by this Court vide order dated 22-11-2002 in Civil Application no.7230/2002 is hereby modified accordingly and shall continue till the disposal of the suit.

3. However, it is observed that the trial Court shall, in the interest of justice, hear and decide the suit as expeditiously as possible preferably within six months as the suit is filed in the year 1998. The parties are directed to cooperate. If any party fails to

cooperate with the proceedings of the trial Court, the other side can pray for appropriate relief or modification of the order passed by this Court by way of interim arrangement. The findings qua possession and enjoyment of the property recorded by this Court is tentative and should not influence the learned trial Judge while dealing with the suit on merits.

4. With these observations and directions, the Appeal as well as the Civil Application stands disposed of. Rule is made absolute accordingly in each of the matters.

(C.K.Buch,J.)

stanley-ckb.